

Local 513, International Union of Operating Engineers, AFL-CIO and United Painting Company, Inc. and Painters and Allied Trades Local Union 1292 affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO

Laborers International Union of North America, AFL-CIO, Local 282 and United Painting Company, Inc. and Painters and Allied Trades Local Union 1292 affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO

Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 574, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and United Painting Company, Inc. and Painters and Allied Trades Local Union 1292 affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO. Cases 14-CD-617, 14-CD-618, and 14-CD-619

May 7, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by United Painting Company, Inc., herein called the Company or the Employer, alleging that Local 513, International Union of Operating Engineers, AFL-CIO; Laborers International Union of North America, AFL-CIO, Local 282; and Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 574, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, have violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to their members rather than to employees represented by Painters and Allied Trades Local Union No. 1292 affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO.

Pursuant to notice,¹ a hearing was held before Hearing Officer Leonard J. Perez on December 18, 1980. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.² Thereafter, the Employer and the Laborers filed briefs.

¹ On November 19, 1980, the Acting Regional Director for Region 14 issued an order consolidating cases and notice of hearing. The caption above reflects that order.

² The Board of Municipal Utilities of Sikeston, Missouri, was served with a copy of the order consolidating cases and notice of hearing since it is the general contractor for the construction of the power plant in Sikeston, Missouri, the setting for the events here. Representatives of that

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a New York corporation with its principal offices located at 605 North McQueston Parkway, Mount Vernon, New York, is engaged in the non-retail sale of painting services. During the past 12 months, which period is representative of the Employer's operations, the Employer purchased and received goods valued in excess of \$50,000, which goods were shipped directly to the Employer's Sikeston, Missouri, jobsite from points located outside the State of Missouri. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Operating Engineers, the Laborers, the Teamsters, and the Painters are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

The Employer is a painting contractor whose operations consist of the application of paint and other surface coatings and the preparation of surfaces prior to the application of coatings at various industrial jobsites throughout the United States. In this capacity, the Employer submitted a bid to the Board of Municipal Utilities of Sikeston, Missouri, for certain painting and surface preparation work to be performed at the Sikeston, Missouri, power plant jobsite and was awarded such work by letter dated May 19, 1980.

On or about August 4, 1980, the Employer appeared at the jobsite to deliver temporary buildings to be used by the Employer during its operation at the Sikeston project. The buildings were delivered by Allen Czronka, the Employer's supervisor and a Painters member. After Czronka entered the jobsite and parked the truck, he was approached by Mutt Henson, who identified himself as a steward for the Teamsters. Henson told Czronka that the Company

board failed to appear at the hearing or otherwise participate in these proceedings.

would have to employ a member of the Teamsters to drive the truck through the jobsite gate, to the jobsite, and out of the jobsite gate. When Czronka informed Henson that the Employer's employees would man their own equipment and trucks, Henson said, "We'll see about it."

On November 4, 1980, Czronka rented an air compressor, purchased sand, and drove to the jobsite in his pickup truck. Immediately after driving into the jobsite and parking his truck, Czronka was approached by Teamsters Steward Mutt Henson. Henson inquired if Czronka had his "stuff together." Czronka handed a copy of the Employer's national agreement with the Painters to Henson, and told Henson that the Employer's employees would "man" their own materials and vehicles. Henson responded, "That is a bunch of garbage."

Czronka then drove the truck to the Company's onsite office building and went into the building. Upon exiting the office, Czronka found approximately nine individuals surrounding his vehicle. They identified themselves as members of the Operating Engineers, the Laborers, and the Teamsters. Czronka asked if any of the men surrounding his truck were stewards. They responded, "We have no steward. Everybody is a steward." Then, Teamsters Steward Henson said to Czronka, "If you move this truck, I'll bust your head." Czronka was then informed by Laborers member Joe Smith³ that, "I called my business agent. Hand over the material. Pouring the sand is our job and we will manage it." In response, Czronka handed Smith the Employer's national agreement with the Painters. Smith said that it did not change his mind as he was merely following his business agent's orders.

Finally, an individual who identified himself as a member of the Operating Engineers, and who was later identified by one of the contractor's officials as Operating Engineers Steward Gunther, threatened to "put knots" on Czronka's head if he attempted to operate the compressor, and further informed Czronka that he had better watch out since, "Around here they [compressors] have a habit of burning up."

In the face of these threats, Czronka immediately telephoned the Company's president, Stein, at his New York office and informed him that the Operating Engineers, the Laborers, and the Teamsters would not permit the Company to operate its equipment or perform its sandblasting operation.

³ The Laborers contends that Joe Smith is not an agent of their Union. Smith testified that he was no longer a union steward at the time of this incident although he had formerly held that position. According to Smith, due to an unexplained incident, he was relieved from his position as steward in early 1980. Nonetheless, Smith has for the last 2 years had the responsibility of claiming work on behalf of the Laborers at the Sikeston project. According to Smith, that responsibility did not change when he was relieved from his position as steward.

Stein instructed Czronka to remove the equipment from the jobsite. As Czronka was in the process of speaking to Stein in the jobsite office, Teamsters Secretary-Treasurer Hurst and Steward Henson entered the office. Hurst asked Czronka if he could speak to Stein. After identifying himself as the secretary-treasurer of the Teamsters, Hurst told Stein that "You will have to use a Teamster to move anything." Stein informed Hurst that, pursuant to his national agreement with the Painters, he has consistently assigned all incidental driving duties to employees represented by the Painters. Hurst answered, "Well, that is not the way it is here." When Stein informed Hurst that the Employer's onsite driving requirements were, at best, minimal, Hurst issued an alternative proposal that the Company, in effect, "rent-a-Teamster" from other contractors.⁴ Stein later rejected this proposal.

Jim Davis, who acts as an agent and representative of Respondents in his capacity as business manager of the Southeast Missouri Building and Construction Trades Council, and is business manager of the Operating Engineers, telephoned Stein on November 4, and demanded that Stein sign collective-bargaining agreements "covering the various trades." Stein informed Davis that the Employer was a party to a national agreement with the Painters and would not sign any agreement with any other labor organization.

The Operating Engineers business manager, Jack Martorelli, also called Stein on November 4. When Stein rejected Martorelli's demand that the operation of all compressors used at the Sikeston project be assigned to members of the Operating Engineers, Martorelli told Stein that:

In the East there, the people have lot of social engagements to involve themselves in after work and so when they leave the job, they leave their problems on the job and they go home . . . [D]own here . . . you know, they brood after work and they take their problems home with them . . . they get ugly. I don't want to have any problems . . . I am just giving you a little advice.

Approximately 2 weeks later a truckload of paint was scheduled to be delivered to the site. Czronka made arrangements with Painters Representative Slinkard for the provision of two employees to unload the paint. Immediately upon the arrival of the paint at the jobsite, Joe Smith appeared on the

⁴ Under this proposal the Employer would obtain a Teamsters member from another contractor who employed Teamsters members and use him for the time necessary to move the Employer's truck into and out of the gate and for any work while inside the gate. The Employer would then be charged by the contractor for the Teamsters member's time plus fringe benefits, overhead, profit loading, and overhead loading.

scene and, on behalf of the Laborers, demanded that Czronka assign all unloading duties to members of the Laborers. Smith's demand was referred to Slinkard. Following Slinkard's rejection of Smith's demands, Smith said to Czronka and Slinkard, "I called my business agent and he said, we'll let you unload the paint, but we get the sand." Slinkard rejected that demand and told Smith "[W]e man our own materials." Under Czronka's direction, members of the Painters then unloaded the paint.

The final incident took place on December 4, 1980, when Czronka secured the services of Painters member Tommy Dunn, rented another compressor, obtained sand, and proceeded to the jobsite to begin sandblasting. While Czronka was speaking to an official of one of the contractors, Dunn was unwinding the hoses used in the sandblasting operation. Czronka looked over to where Dunn was working and noticed approximately five people congregated around Dunn. The official Czronka was talking to identified one of them as a member of the Operating Engineers. Dunn testified that this group approached him, identified themselves as members of the Operating Engineers, and demanded to know what type of work he was preparing to perform. When Dunn informed the group that he was preparing for sandblasting, one of them responded, "Not with this fucking compressor." Dunn immediately informed Czronka that there was a problem and that the Operating Engineers would not permit operation of the compressor. Czronka proceeded to the compressor and attempted to start it. He was grabbed from each side and pulled away from the compressor at which time one of the individuals said, "We're Operating Engineers. You will not man this compressor." When Czronka advised them that their attorney had provided assurances to the Board that further misconduct would not occur, they told Czronka to "Fuck your agreements."⁵

⁵ In this regard, Czronka was referring to a letter sent to Theron D. Lorimer, Field Examiner for Region 14 of the National Labor Relations Board, dated November 17, 1980, that said:

Dear Mr. Lorimer:

With respect to the above-captioned matter [Operating Engineers Local 513 (United Painting Company Inc.), NLRB Case 14-CD-617] as counsel for Operating Engineers Local 513 we are authorized to state on its behalf that Operating Engineers Local 513 will not engage in conduct prohibited by Section 8(b)(4)(D) of the National Labor Relations Act to induce or encourage United Painting Company, Inc., to cease performing services or to force or require United Painting Company, Inc., to assign particular work to employees represented by Operating Engineers Local 513 rather than to employees of United Painting Company, Inc., at the Sikeston Power Plant project, Sikeston, Missouri.

Very truly yours,
Harold Gruenberg
Attorney

Immediately following this confrontation, Joe Smith approached Czronka and announced that he had discussed the Employer's actions with a business agent of the Laborers and that, "If you pour any sand into the car we will go out the gate and put a picket up." Czronka told him he could do whatever he wanted but that the Employer was going to "man" its own work. Smith testified that he did not tell Czronka that the Laborers would definitely picket but instead that they would "probably leave."

Czronka and Dunn left the equipment at the jobsite and returned to the company office to telephone Stein. After being advised by Stein to pull all equipment off the jobsite and to avoid further violence, Czronka and Dunn returned to collect their equipment. The compressor's alternator wires had been cut during their absence. At the time of the hearing, the work in dispute was not completed.

B. The Work in Dispute

The work in dispute in Case 14-CD-617 involves operating sand and hydroblasters, compressors, and related equipment used in surface preparation work prior to painting of structures at the Sikeston Power Plant #1, Sikeston, Missouri. In Case 14-CD-618, the disputed work involves placing sand in pots used in conjunction with sandblasting and surface preparation work prior to painting structures at the Sikeston Power Plant 1, Sikeston, Missouri. In Case 14-CD-619, the disputed work involves driving vehicles and delivering paint supplies from the painting shack to various work locations and manning the painting shack at the Sikeston Power Plant #1, Sikeston, Missouri.

C. The Contentions of the Parties

The Employer contends that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated and that there exists no voluntary method for settling the dispute. The Employer also contends that the collective-bargaining agreement, company practice, economy and efficiency, and its initial assignment of the work favor an award to its employees represented by the Painters. The Painters concurs with the Employer in its position.

Respondents take the position that there is no jurisdictional dispute within the meaning of the Act as there exists no reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. Nonetheless, the Operating Engineers, the Laborers, and the Teamsters have not disclaimed the work and contend that, should an award be made,

each organization should be assigned the work demanded. In its brief to the Board, the Laborers contends that the disputed work falls within its jurisdiction based on area practice.

D. Applicability of the Statute

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

Undenied testimony establishes that the Operating Engineers, the Laborers, and the Teamsters engaged in proscribed conduct by threatening violence and, on December 4, physically restraining one of the Employer's employees because the disputed work was not assigned in accordance with their respective demands. Laborer Smith denied that he informed Czronka that the Laborers would definitely picket if its members were not assigned the work it demanded. Smith testified that he merely said that the Laborers would "probably" picket.

Respondents further contend that, although the acts described above may have occurred, they were not committed by agents of any of Respondents. We disagree with this contention.

With respect to the Operating Engineers, the record indicates that a local union official, Jack Martorelli, called the Employer's president on November 4 and told him that employees in Missouri "take their problems home with them . . . they get ugly. I don't want to have any problems." Moreover, Jim Davis, business manager of the Southeast Missouri Building and Construction Trades Council and business manager of the Operating Engineers, also called Stein, "demanding" that Stein travel to Missouri to sign a collective-bargaining agreement "covering the various trades." Finally, on November 4 and December 4, individuals identifying themselves as members of the Operating Engineers threatened Czronka that they would "put knots on his head" and physically prevented him from operating the Employer's compressor.

With respect to the Laborers, aside from the demands made by Jim Davis on its behalf, *supra*, Laborer Joe Smith told Czronka at the jobsite that he (Smith) was acting under the order of the Laborers business agent. This statement was not refuted by the Laborers at the hearing. Smith told Czronka that the Laborers would "go out the gate and put a picket up."

With respect to the Teamsters, Steward Henson threatened Czronka with violence on November 4

if Czronka drove the company truck. At the same time, Teamsters Secretary-Treasurer Hurst told the Employer's president, Stein, that the Employer would have to use a Teamsters member to "move anything."

There is no evidence that there exists any method agreed upon by all parties for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, on the facts herein, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and that this dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.⁶ The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.⁷

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements

The Employer is party to a national collective-bargaining agreement with the International Brotherhood of Painters. Article II, section 2, of that agreement states in relevant part that:

Work covered by this Agreement shall include all work coming within the work jurisdiction of the Brotherhood as presently set forth in its Constitution, to be performed by the Employer, including but not limited to the application of specialty coatings . . . and all work pertaining to surface preparation such as sandblasting, waterblasting, . . . and the operation and care of all tools and equipment coming under the Brotherhood's jurisdiction, including but not limited to . . . pressure guns and other miscellaneous hand and power driven machines and the *handling of all materials in conjunction with the above work process.* [Emphasis supplied.]

Moreover, the Employer, in connection with the Sikeston power plant project, is also party to the local collective-bargaining agreement with Painters Local 1292. Section 6-11 of that agreement states in relevant part that:

⁶ *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [Columbia Broadcasting System], 364 U.S. 573 (1961).

⁷ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

The following shall be the work of painters and job assignments shall be made to painters, but shall not be limited to the following:

Driving of company vehicles, unloading and stockpiling of all materials, dispersal of all materials on the job site, mixing of all materials, applying of all materials . . . all preparations for painting, all cleaning of tools . . . loading and unloading of all tools into and from company vehicles . . . [Emphasis supplied.]

In accordance with these provisions, the Employer has assigned all of the work in dispute to its employees represented by the Painters. The Employer is not a party to any collective-bargaining agreement with the Operating Engineers, the Laborers, or the Teamsters, nor does it employ employees represented by these Unions. We conclude, therefore, that the relevant collective-bargaining agreements favor an assignment of the disputed work to employees represented by the Painters.

2. Employer assignment and past practice

Albert M. Stein, president of the Employer, testified that the Employer's practice throughout its 33-year history has been to have its employees represented by the Painters perform all work such as that to be performed at the Sikeston project. Thus, the factor of employer assignment and past practice is clearly in favor of an award of the work in dispute to employees represented by the Painters.

3. Area practice

Stein testified that this was his first contracting job in southeast Missouri. In Marion, Illinois, however, approximately 80-100 miles away, the Employer had local Painters members perform all similar work at a job at an electric generating station. In its brief to the Board, the Laborers argues that the practices at Marion, Illinois, are irrelevant to this proceeding as it is outside the jurisdiction of Respondents here.

Mark Slinkard, business representative for the Painters, testified that, at some of the contracting jobs at Sikeston and at some other jobs in the southeast Missouri area, members of the Laborers retained the job of filling sand pots with sand. Slinkard also testified that he was aware that one contractor at the Sikeston site assigned members of the Teamsters to drive a truck while on the jobsite. As for the Operating Engineers, the record does not contain any testimony that in similar circumstances in southeast Missouri its members have ever been assigned the job of operating the sandblasting and related equipment used in surface preparation work prior to the painting of structures.

Given some conflicting testimony and some question as to the relevance of Stein's testimony concerning his practice at Marion, Illinois, it does not appear that the factor of area practice favors assignment of the disputed work to any group of employees involved here.

4. Relative skills

Employees represented by the Painters and those represented by the Operating Engineers, the Laborers, and the Teamsters all possess the ability to perform the work in dispute. Therefore, this factor does not favor assignment of the disputed work to any group of employees involved here.

5. Economy and efficiency of operation

The employees represented by the Painters perform work for the Employer other than that in dispute. These employees are involved in every step of the operation from moving equipment and materials on to the jobsite, scaffolding and rigging, preparing surfaces, applying paint, and moving all equipment and material off the jobsite. As a result, their versatility permits the Employer to perform both the disputed work and other work tasks with the same personnel. Employees represented by the Operating Engineers, the Laborers, and the Teamsters could not perform these other tasks unless they received substantial additional training. Accordingly, we find that the factors of economy and efficiency of operation support an award of the work to employees represented by the Painters.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that the Employer's employees who are represented by the Painters are entitled to perform the work in dispute. We reach this conclusion by relying on the collective-bargaining agreements, the Employer's past practice, preference, and present assignment of the work, and the relative efficiency and economy of the Employer's operation, all of which favor an award of the disputed work to the employees represented by the Painters. In making this determination, we are awarding the work in question to employees who are represented by the Painters but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this

proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of United Painting Company, Inc., of Mount Vernon, New York, currently represented by Painters and Allied Trades Local Union 1292 affiliated with International Brotherhood of Painters and Allied Trades, AFL-CIO, are entitled to perform the work of (1) operating sand and hydroblasters, compressors, and related equipment used in surface preparation work prior to painting of structures, (2) placing sand in pots used in conjunction with sandblasting and surface preparation work prior to painting of structures, and (3) driving vehicles and delivering paint supplies from the painting shack to various work locations and manning the painting shack at the Sikeston Power Plant #1, Sikeston, Missouri.

2. Local 513, International Union of Operating Engineers, AFL-CIO; Laborers International Union of North America, AFL-CIO, Local 282; and Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 574, affiliated with Inter-

national Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require United Painting Company, Inc., to assign any of the disputed work to employees represented by those labor organizations.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 513, International Union of Operating Engineers, AFL-CIO; Laborers International Union of North America, AFL-CIO, Local 282; and Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 574, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, shall notify the Regional Director for Region 14, in writing, whether or not they will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.